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10/768,222	01/30/2004	John L. Andersen	BUI02 P-320	6217
277 7590 01/23/2008 PRICE HENEVELD COOPER DEWITT & LITTON, LLP 695 KENMOOR, S.E. P O BOX 2567 GRAND RAPIDS, MI 49501			EXAMINER CHAPMAN, JEANETTE E	
			ART UNIT 3633	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/768,222
Filing Date: January 30, 2004
Appellant(s): ANDERSEN, JOHN L.

MAILED

JAN 23 2008

GROUP 3600

Eugene J. Rath III
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed October 15, 2007 appealing from the Office action mailed October 18, 2006.

(1) Real Party-in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,938,640	MUSTOE	9-2005
6,419,102	HARPENAU	7-2002
2,752,217	SIMON	6-1956

(9) Grounds of Rejection

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The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1-7 and 9-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mustoe (6938640) in view of Simon (2752217).

A housing for a dryer venting comprising;

- A top wall 22
- A bottom wall 26
- two side walls 34
- a rear wall 28 attached to the top, bottom and side walls
- The above walls are combined to define an inner space sized to house a portion of venting 72 attached to a clothes dryer
- A front face 36 extending from one of the walls
- Mustoe shows housing attached to the stud by face 36, column 4, lines 48-60.
- Mustoe lacks the plurality of standoff extending rearwardly from the front face plate Figure 3 shows fastener holes which is adapted to receive a screw; Simon discloses a plurality of standoffs 50 including a hole which is adapted to receive a screw 40. The knockoff includes a beveled portion at and adjacent element 51 to

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assist in boring the standoff into the wood. See figures 2 and 4 of Simon. It would have been obvious to place the standoffs in any location when the same is attach to a stud or other building structure to rigidify and strengthen the area of attachment

- knockouts 38/42 are sized to receive a duct 72 attached to a clothes dryer 76; the knockouts are located in the top, bottom, side walls and back walls
- a plurality of post 66 adapted to have a bracket 24 attached thereto for holding a dryer venting duct in place and stable
- regarding the method claim, Mustoe discloses
 1. providing the above housing
 2. providing a wood stud 66 for a wall in the building wall
 3. positioning the housing so that the standoffs of Simon are aligned with the wood stud
 4. Simon discloses applying pressure against the housing to force a portion of the standoff into the stud
 5. permanently attaching the housing to the wood stud

Claim 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mustoe in view of Simon and further in view of Harpenau (6419102). Harpenau discloses a housing for a dryer venting comprising top, bottom and side walls at an angle of greater than 90 degrees. The exact angle has been considered a matter of choice. One of ordinary skill in the art would have appreciated attaching the walls at any angle that enables the intended use, function and purpose of the housing. It is appreciated that not

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all housing or apertures for in wall boxes includes straight walls or sides and to accommodate the fitting of the housing within the aperture, one may be forced to employ housing having angled sides.

(10) Response to Argument

Applicant's main arguments are that the examiner has not established a prima facie case of obviousness and that the references do not teach standoff's extending rearwardly from a front face plate. Applicant further argues that one of ordinary skill will not be motivated to combine the teaching of Simon with that of Mustoe because Simon is directed to a non-analogous field of art.

Simon discloses in column 1 lines 1-15, "The invention relates to a cabinet structure of the type designed *to be mounted in a wall between two studs*.....my invention will be described as embodied in a medicine cabinet, although the principles thereof can be applied with equal cogency *to other types of cabinets*."

Applicant's specification page 1 states, "The present invention relates to an in-wall box where the in-wall box is typically recessed. Specifically, the present invention relates to an in-wall box the box being adapted *to attach to the wall studs in a house or other building*..... an in-wall box may be used that serves both a functional and aesthetic purpose. In-wall boxes are typically recessed, at least partially, into the wallwhile remaining more pleasing aesthetically than a simple hole in the wall. "

With the above two disclosures, the references are appropriately combined to provide the teaching of the standoffs.

Standoffs are universal generic elements used in the mechanical arts anywhere reinforcements and/or strengths is needed in an area of attachment or an area of a single element. They are applied to many different types of structural elements as they are needed. Their use in one structural element/environment does not preclude their use in a differently structured element/environment. Again they are universal generic elements whose individual function does not change from one mechanical environment to another.

Mustoe does teach fasteners extending rearwardly from a front face plate. See column 4, lines 54-60. Hence, fasteners of the customary type such as nails or screws attachable to the plate, must extend rearwardly to fasten to the studs. Alternatively, tabs can be coupled to and extend from the flanges to be subsequently attachable to the studs. Again, the tabs extend rearwardly from the face plate.

Simon teaches the standoff type tabs 50 which have a portion to attach to a wood stud 30. Further the standoff 50 includes a hole 39 to receive a screw 40. The Simon reference is not bodily incorporated into Mustoe. The test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the

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structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. The standoffs of Simon could be merely used in place of the fasteners or tabs of Mustoe in order to prevent dislodgment of the cabinet or in wall box from dislodgement or outward movement from the studs. Further the load on the fasteners is reduced.

Though not clearly stated, applicant argues against the use of the Harpenau reference citing that the combination of the three references engages in hindsight reasoning. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper.

Applicant appears to agree that Harpenau teaches an in wall box with walls at an angle other than 90 degrees; see page 7, line 8. Regarding the hindsight argument, all three references are directed to in wall box housing. All elements have been addressed by the prior art references. The minor difference appears to be in the recitation of the exact angle range recited in claim 8. However, one of ordinary skill in the art would have appreciated that not all wall openings and housings include 90 degree or straight walls.


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To accommodate various differences in wall openings, one of ordinary skill in the art would be motivated to make the housing walls of angles other than 90 degrees or walls that are not straight.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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